



Worldwide Conference

# USACE Legal Services

23-27 June 1997  
Naples, Florida

## The USACE Strategic Vision



- > Align for Success
- > Satisfy the Customer
- > Build the Team
- > Serve the Army
- > Enhance Capabilities
- > Build Strategic Commitment
- > Reshape Culture

## Introduction and Welcome

**Newton Klements**, Deputy Chief Counsel, welcomed everyone to the 7th Worldwide USACE Legal Service Conference. He explained that the Chief Counsel, Lester Edelman, was detained in Washington, DC., attending an ADR meeting hosted by Secretary of Defense William Coleman, and that Mr. Edelman would join us this evening.

Mr. Klements asked everyone to take a moment to remember Matt Thomason, our colleague whose tragic death has

affected us all. He acknowledged the painful times many have experienced the past year, and noted that, on the brighter side, Steve Lingenfelter is recovering from his accident, Abby Dunning is getting married, and Bill Hough celebrated his 50th birthday on June 22..

Mr. Klements noted the retirement of four colleagues - Claude Bagley, Lyman Carter, Joe DiGiovanni, and Hector Vela. He introduced new Division and District Counsels Mike Feighny (Pacific Ocean); Darrell Riekenberg (Albuquerque); Geoff Mueller (Korea); Gwen Nachman (New Orleans); Lorraine Lee (New York); Larry Barnett (Mississippi Valley - acting); and Robert Jones (Southwestern - acting).

Mr. Klements next introduced other Corps Attorneys representing their offices: Bill Gulley (South Atlantic); Richard Santino (New England); Michael Ryba (Philadelphia); Toni London and Susan Fink (Alaska); and Dane Hlebechuk (Portland). He then acknowledged other Corps Legal Services Team Members in attendance or expected: Jim Brent (Transatlantic); Terry Clarke (Huntington); Arvis Freimuts (Detroit); Chuck Frew (Huntsville); Al Gilley (Baltimore); Robert Hensen (Seattle); Pasty Knight (Southwestern); Annette Kuz (Humphreys Engineers Center); Bill Levins (St. Louis); Ann Tucker (Little Rock); Ann Westbrook (Savannah); Jerusha White (Kansas City); and Katherine Will (Baltimore). Mr. Klements acknowledged our guests Col Terry Rice, (Jacksonville District Commander); Susan Duncan (Director of Human Resources) Bunny Greenhouse (the new Principal Assistant Responsible for Contracting); and Manning Seltzer.

Finally, Mr. Klements introduced the Conference committee; Carolyn Lynch, Jan Manwiller, Hal Perloff, Robert Nichols, Judy Bryson, Linda Beckles, Barbara Davis, and Tina Fulton.

Mr. Klements explained that the purpose of the conference is to confront the future. The Corps' Legal Services System has always tried to stay ahead of the power curve, and we need to continue to do so- to be more effective than ever and to provide value added service to our clients.

The Chief's Vision is Corps Plus, and we should consider ourselves "Corps Legal Services Plus." This means that we're good, but we can get better. We must not be complacent, but must remain on the cutting edge.

Mr. Klements went over the week's agenda. He explained that the purpose of the meeting was to share knowledge, experience, and thoughts. He encouraged everyone to participate fully and expressed his hope that everyone would find the meeting worthwhile. ⚖️

### AGENDA

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|-------------|--|
| 8:00-8:30   | <b>Introduction and Welcome</b><br>Newt Klements, <i>Deputy Chief Counsel, HQUSACE</i>   |
| 8:30-8:45   | <b>Video: The Corps Command Briefing</b>   |
| 8:45-9:45   | <b>Corps Activities in Florida</b><br>COL Terry Rice, <i>Commander Jacksonville District</i>                                   |
| 9:45-10:00  | <b>Delivery of Legal Services: Task Force Update</b><br>Newt Klements, <i>Deputy Chief Counsel, HQUSACE</i>                    |
| 10:15-11:30 | <b>CEALS Revisioning</b><br>Craig Schmauder, <i>Counsel Huntsville Engineering and Design Center</i>                           |
| 11:30-12:00 | <b>Legal Opinions Database</b><br>Rupert Jennings, <i>Senior Counsel for Military Programs, HQUSACE</i>                        |
| 1:15-2:00   | <b>Human Resources: Issues and Implications</b><br>Susan Duncan, <i>Director, Human Resources, HQUSACE</i>                     |
| 2:00-3:30   | <b>The "New" Law Library and Legal Research</b><br>Roberta Shaffer, <i>Director of Library Services, Covington and Burling</i> |
| 3:30-4:30   | <b>Hot Topics</b>  |

# Corps Activities in Florida

**COL Terry Rice**, Jacksonville District Commander, presented an overview of Corps projects ongoing in Florida.

From the time that Florida became a state, the Federal government has encouraged development in the area. Much of the hydrology of Florida was altered within the first few decades of statehood. After this occurred, fires and hurricanes struck Florida with force. As a result of these problems, the Corps was brought into Florida in 1948 to control Florida's water resources.

Florida has seen three distinct phases: before the Corps, after the Corps' arrival, and the rise of the recent environmental movement. This most recent phase has made Florida a busy area for the Corps of Engineers. The Corps is actively involved in a wide array of activities in Florida covering the intercoastal waterway, five ports, 404 permitting, flood protection, hurricane relief and cleanups, ecosystem restoration, and the task of balancing these tasks with a greatly-increasing population. Part of the Corps' efforts include undertaking extensive restoration efforts with the following three primary objectives: (1) to coordinate and to optimize water timing, amounts, and quality; (2) to restore Everglades National Park and other sensitive lands; and (3) to protect endangered species in a multi-species, simultaneous recovery efforts.

The Corps faces three major challenges in Florida today. First, Congress has directed the Corps to look at Florida as a system, not as distinct parts. This includes submitting projects together and in context. Second, the Corps must balance the numerous diverse interests present in Florida and ensure that they work together. Third, the Corps must develop a more effective method for dealing with land development efforts. This last challenge includes applying the tools found in Section 404 of the Clean Water Act to optimize the use of the remaining land. Recent legislation from Congress in the various Water Resources Development Acts are helping the Corps to meet these challenges.

This same legislation has mandated several critical projects in Florida. The time line for initiating those critical projects is fairly short (September 1998). The Corps is currently doing \$3 billion of work in Florida. This will grow to nearly \$6 billion in the next few years. ⚖

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## Delivery of Legal Services: Chief Counsel's Task Force Update

Newt Klements updated the group on the status of implementation of several of the Chief Counsel's Task Force (CCTF) recommendations.

Mr. Klements discussed the following recommendations:

1. Integrated Legal Services System
2. Focus CECC on policy
6. Modify Chief Trial Attorney Function
16. Establish Minimum Core Functions at District
19. Create Legal Services Deskbook
23. Increase Electronic Communication
24. Review CMIS-II.


By way of background, Mr. Klements reminded the attendees that the CCTF report was completed in 1994 and a briefing was provided to attendees at the 1995 Worldwide Legal Services Conference. During this past year, emphasis has been placed on long range matters such as development or improvement of legal services databases, CEALS revisioning, automation (including the deskbook and legal opinion database) and CMIS review.

Mr. Klements briefly reviewed the planning assumptions and guiding principles upon which the CCTF recommendations were based. Attendees were asked to keep these in mind during and after the conference. The success of the USACE legal services program lies in the delivery of the highest quality product; a timely response to clients; in a cost efficient manner. The USACE legal services system has the best handle in the Corps about what is done, how it is done and how to measure delivery of services. On the whole, the caliber of Corps attorneys is well recognized. The guiding principles necessitate that operational legal work be performed at the lowest levels while policy be issued by CECC. To this end, CECC will provide information and tools such as bulletins (CECC-C), claims and appeals and fiscal law information, PCAs, and so forth, to assist the field.

The Chief Trial Attorney Qualification Programs has been established, the first requests for Type III qualification have been recieved and approved. The delegations which were

recommended have been completed and are working well. Mr. Klements indicated that Tom Burt would report separately on the subject of Minimum Core functions at Districts; Craig Schmauder would report on the review of CMIS-II. The installation of the Legal Services Deskbook on the Legal Services Homepage resulted from the initiative of Robert Henson, Seattle District who provided a demonstration for the group. In addition, Robert assisted Tom Burt with automating the District cores functions.

The recent deployment of the Legal Opinion Database implements, in part, CCTF recommendation #23. Rupert Jennings and Jan Manwiller provided a demo at a separate session. Mr. Klements encouraged the attendees to contribute to maintaining these databases. He also emphasized that the initiatives that he had discussed related back to an integrated legal services system (recommendation #1). All elements of the USACE legal services systems need to work together.

If the legal services community does not work together mission accomplishment is hurt and that legal services program is weakened. Mr. Klements stressed the importance of the lawyers coming together on legal issues before advising clients. 

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## CEALS Revisioning

CEALS Program Manager, **Craig Schmauder**, gave a very dynamic update on the status of the CEALS Revisioning effort. He noted that "these are very exciting times for CEALS right now," and highlighted a number of new developments that have occurred in the past year: a Web-based upgrade to the MAX computer conferencing system; updated sections on the Legal Services and CEALS Web Sites; and the most recent deployments of the Legal Opinions Database and the Legal Services Functions Database (both discussed in respective articles later in this Report). With pride, he also mentioned the success of the DoD-wide Wage Determinations OnLine System (providing web-based searches on Davis-Bacon and Service Contract wage rates) that has recently been selected to receive the National Performance Review's (NPR) Hammer Award.

Undoubtedly the most significant CEALS development, however, has been our "partnership" with Law Manager, Incorporated (LMI), who in Dec '96, was awarded the contract to develop a Matter Tracking System (MTS) for CEALS -- a system that signals the demise of CMIS-II and opens up our case-management, [hereunto referred to as "matter tracking"] to a client-server, Windows-based environment. The redesign of our case-management system has been one of the most anticipated legal services modernizations arising from the Chief Counsel's Task Force Report. There has been a lot of energy surrounding the development of the new MTS, and Mr. Schmauder praised the Procurement Team (Patty Vatter, Jan Manwiller, Steve Lingenfelter, Sandy Solomon, Norm Spero, Mike Redfield, John Brady, Randy Florent, Patsy Knight and Carolyn Lynch) for their exceptional

effort in getting the contract specs written and the contract awarded. Mr. Schmauder went on to note the significant work that Patty and Jan have accomplished with LMI to get the existing CMIS data converted and system design underway. Counsel offices should expect to get their hands on the new system sometime during 4th Qtr FY97. Plans are to have regional training sessions on the new system in early FY98, followed by a Worldwide CEALS Conference. Mr. Schmauder went on to say that after the new MTS is deployed, he never wants to "see, hear or speak the word 'CMIS' again!"

Mr. Schmauder then introduced LMI's Project Manager, Bill Swank, who was on hand to give a live demonstration of new MTS using our existing Corps data. Mr. Swank demonstrated two areas of usage -- searching existing data and entering a new matter. Mr. Swank began by explaining the screen layouts, i.e., what information is being tracked, where it is located, and the logic behind the screen design. A key feature demonstrated was the ability to easily search on virtually any data element using "common sense" commands, basic English and the click of a mouse. Attendees were shown a number of different ways a user can search the system, and can easily sort data on any field, just by clicking on the column. One district counsel commented that "the search feature alone was worth the wait!"

Mr. Swank went on to comment that the all the data was portable -- meaning that a user can easily copy data from the MTS into almost any other Windows application, such as wordprocessing, spreadsheets, etc. In addition, with the Notes feature, users can copy text from wordprocessing documents into

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***Pull down menus and pick lists are part of the data entry screen. These lists will eliminate the need to rekey redundant data and save data entry time. The system is being designed to provide as many pick lists as possible, and no codes are involved.***

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any matter. Further, because the system is so versatile, users in local offices can add additional fields to the database and data-entry screens to track local information that the "corporate" system may not need. (These fields would only appear in the local office and not Corps-wide.)

When Mr. Swank demonstrated how a new matter was entered, he emphasized the pull down menus and pick lists that are part of the data entry screen. These lists will eliminate the need to rekey redundant data and save data entry time. The system is being designed to provide as many pick lists as possible, and no codes are involved. In fact, even dates are entered by clicking on a mini-calendar icon and then clicking on the day of the month. So a user doesn't have to remember how to format the date (is it day first and then month, or year first then day, what?)

After Mr. Swank's demonstration, it was easy to see how far automation has come since CMIS-II was first deployed in 1987.

Mr. Schmauder then introduced Robert Henson of the Seattle District -- the creator of the Corps Legal Services

(continued on page 6)

# Legal Opinions Database

**Rupert Jennings**, Senior Counsel for Military Programs, and Chair of the Legal Opinions Database Working Group provided an overview of the recently developed Legal Opinions Database on the Internet.

The database is an outgrowth of the Chief Counsel's Task Force Recommendation #23 - Increase Electronic Communication. One of the desirables of this recommendation was to develop a database of legal opinions that would be available to all Corps attorneys. The Legal Opinions Database Working Group (LOWG - Rupert Jennings, Jan Manwiller, Richard Frank, Matt Keiser, Carolyn Lynch and Russ Petit) was formed in the Spring of 1996. The group's charter was to develop a detailed plan for creating, managing and operating an automated database of Chief Counsel opinions and guidance, and to make recommendations for expanding the database to eventually include field opinions. It is important to note that the group did not define exactly what an opinion is. This database will not only contain traditional legal opinions, but also bulletins, guidance memos, policy memoranda and lessons learned.

The LOWG developed the scope and features of the system, to include categorizing the documents into areas of law and subcategories to those areas. They further defined the search fields that would assist users in constructing more specific searches on the database. For example, the database treats the subject, date, author and signatory as separate "fields" from the remainder (or Body) of the legal opinion itself. This means that if you were searching for a legal opinion on Loveladies Harbor, you could search on that term in the Subject field, and the database would only

return documents where 'Loveladies' was included in the subject line of the opinion. Conversely, if you wanted to search on opinions where Loveladies was used as a cite within an opinion, you could just search on 'Loveladies' in the body of the opinion. This characteristic is different than most search engines on the internet -- you can perform searches faster, and will also get a truer search set from the database. Users can also search on Office, POC, and keywords -- terms that describe the opinion, which may not appear within the opinion itself.

The database was introduced via an "ALLCOUNSEL" memorandum signed by the Chief Counsel, subject: Legal Opinions Database, that was released on June 5, 1997. The database became effective on June 1, 1997 and will include all opinions, guidance, policy, etc, documents signed by the Chief Counsel, unless excluded on a case-by-case basis. CECC documents signed by other than the Chief Counsel will be reviewed individually for inclusion. Older Chief Counsel documents will be reviewed for relevancy, and will be retroactively included. It is expected that the database will be fully populated "to date" by May 1998. The Chief Counsel also decided to include Field Opinions on a voluntary basis. Procedures for submitting opinions for inclusion are outlined in the Chief Counsel memo mentioned above.

Mr. Jennings also noted that due to the sensitivity of some opinions and the "attorney work product" classification, that only Corps attorneys and others in USACE Counsel offices will be granted access. This security requires user ids and passwords. Guidance for how to request access is outlined in the ALLCOUNSEL memorandum.

Following the database overview, Mr. Jennings and Jan Manwiller (the database administrator) accessed the system live on the Internet, and demonstrated the search form, help features and online documentation.

The database is available from the CEALS Home Page at [www.ceals.usace.army.mil](http://www.ceals.usace.army.mil) by clicking on the Legal Opinions Database link. Users must have submitted their CEAP User ID and Password to the CEALS Project Office, IAW the 5 Jun 97 Guidance memo mentioned above, prior to gaining access. ⚖️

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# Human Resources: Issues and Implications

Susan Duncan, Ph.D., Director of Human Resources, USACE, addressed 3 major goals of the Corps Master Strategy: to revolutionize effectiveness, seek growth opportunities and to invest in people. Dr. Duncan organized her presentation around the substrategies of the Corps Vision.

Dr. Duncan focused particularly on some of the ongoing Human Resources (HR) initiatives which to support the strategic goal of "investing in people." Dr. Duncan served as a member of the Chief's transition team and has been involved in helping define the Corps' strategic direction. Dr. Duncan stated that because everything is accomplished through people, the degree to which people challenges are addressed will determine how successful the Corps is in achieving its vision and changing its culture. Therefore, must be a linkage between HR processes and the Vision. The leadership challenge is to ensure that the Vision is reinforced

through aligning systems, especially selections, rewards and development. Actions which have been taken to align for success include the delegation of classification authority to managers who have operating budget authority; the establishment of a centralized selection process for all GS and GM-15 and supervisory GM-14 positions at; and the continued centralization of SES recruitment by establishing rating panels and interview panels at HQUSACE.

Although customer satisfaction is another important substrategy, Dr. Duncan indicated that HR regionalization presents a significant challenge for managers as well as personnel specialists. The Human Resources career field has been downsized almost 50%. As a result, team members and employees will depend more on supervisors and managers for assistance with personnel matters. Working closely with

local Civilian Personnel Advisory Centers (CPAC) will enable managers and supervisors to achieve the goal of customer service and satisfaction, with regard to mission accomplishment.

Dr. Duncan emphasized other initiatives associated with the substrategies including partnering with unions and utilizing mediation to resolve EEO issues and workplace disputes. In addition, the Professional Development Support Center (PDSC) (Huntsville) has been aligned under the Director of Human Resources. Dr. Duncan is coordinating with the EIG on an Evaluation of USACE training to include the PROSPECT program, centrally funded training programs and local training. During the question and answer period, Dr. Duncan clarified that GS-15 and Supervisory GM-14 Attorney positions are included in the centralized selection process and that requirement is separate from the qualifications review accomplished by the Chief Counsel. ⚖️

## CEALS Revisioning, *continued*

Deskbook on the Internet. Mr. Henson began developing a hypertext deskbook (using hypertext markup language or HTML code) at least seven years ago - a long time before HTML became the language of the Internet. When the Web became mainstream in late 1995, Mr. Henson's Deskbook was easy to port over to an HTML-hungry web server. In the past two years, the deskbook has grown to over 3,500 files on CENPS-OC's Web Server and covers virtually every legal area involving the Corps legal services community. Mr. Henson admitted that some legal areas are more densely covered than others, and asked that anyone who had information or suggestions to please contribute! He has received many documents and tips from attorneys across the Corps and welcomes more.

Mr. Henson worked a live Internet session on the Deskbook, highlighting the many legal areas covered, and illustrating how the thousands of documents on the deskbook cross-linked with each other, as well as other related pages on different legal Web sites across the Internet for easy navigation and research. He highlighted a number of different segments of the deskbook, including significant and precedential cases affecting the Corps that he has captured in full text, a form bank that includes numerous memoranda and form templates for legal documentation, and the numerous deskbooks and course materials that he has uploaded with permission from the JAG School and other federal legal offices.

He noted that the deskbook was developed not just for the seasoned attorney, but to also provide a starting point for attorneys new to the Corps or to a different legal area. The Deskbook is organized by legal categories and functions and ultimately can provide a "one-stop-shopping" service to those individuals desiring comprehensive information for a given legal area. He emphasized that the importance of the Deskbook ultimately is that it may prevent constantly reinventing the wheel. He called it a "powerful and efficient" research tool for the Corps attorney.

Newt Klements personally thanked Robert for the tremendous effort he has made and continues to expend in developing the Deskbook -- one of the "Wows" in the Corps legal services community. ⚖️

## The “New” Law Library and Legal Research

Roberta I. Shaffer, the Director of Research Services for the Washington, DC law firm of Covington & Burling, gave conference attendees an interesting overview of the future of the law library. Based on a 1995 survey performed by Lawyer Cooperative Publishing Co., approximately 39 percent of legal research is performed with traditional paper based resources while over 53 percent of legal research is performed by electronic means including CD-ROM, on-line services (LEXIS-NEXIS & Westlaw), and the Internet. Ms. Shaffer then noted the results of a recent study on legal research by Harvard Law School which showed the following trends emerging in legal research:

1. Research is becoming more specific and interdisciplinary
2. Increasing acceptance of unpublished opinions
3. Current research is increasingly important due to technology
4. Decreased reliance on published indexing systems
5. Decreased reasoning by analogy by researchers.

Additionally, she noted the direction in the legal publishing industry is taking. Specifically, legal publishers are increasingly centralized, while “niche” publishers are able to flourish with specialized CD-ROM products. Fewer resources are available in paper format (specifically treatise type work).

Ms. Shaffer then discussed the use of the Internet as a legal research tool. The advantages of using the Internet for legal research are that it crosses disciplines and does not require an extensive in-house infrastructure to access information. Additionally, the Internet is free, timely, and unique. Further, the interactive research methodology on the Internet is easy to master. The primary disadvantages of the Internet based legal research are that the information is volatile (“here today, gone tomorrow”) and its veracity is difficult to determine. Additionally, researchers can easily become bogged down and overloaded with data. Finally, Internet connections are frequently slow and it requires great initiative to maintain links and stay current. Ms. Shaffer also identified Internet tools and locations that are helpful in conducting legal research.

In the future, Ms. Shaffer predicts decreased reliance and availability of print media and an increase in the LIMO (library in my office) trend with electronic resources. She recommends that legal researchers have Internet access through powerful laptop style computers (with CD-ROM). She also recommends that print materials be purchased selectively.

During the discussion session which followed her presentation, Ms. Shaffer identified some of the disadvantages to CD-ROM based legal research. In her experience, CD-ROMs can be slow and the technology cumbersome particularly over large networks. However, she indicated that her firm has dramatically decreased its print holdings by scanning certain archival information and making it available on in-house generated CD-ROMs. ⚖️

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## District Legal Services Working Group

Tom Burt provided an update on the District Restructuring Workgroup efforts and accomplishments. The workgroup consisted of seven District and one Division Counsel whose mission was to develop flexible solutions to assist District and Division Counsels and Commanders in relating legal resource needs to mission requirements.

At the first organizational meeting, the group realized that clients did not always understand the services

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*The group focused on developing counsel legal resources to meet changing needs by identifying the impact of eliminating legal services being provided, solving the matter elsewhere, and impact of legal services delivery on mission and project execution.*

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### AGENDA

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|-------------|---|
| 8:00-9:15   | <b>District Legal Services Workgroup</b><br>Tom Burt, <i>Mobile District Counsel</i>  |
| 9:15-10:15  | <b>Chief's Vision and Strategic Plan</b><br>MG Albert Genetti<br><i>Deputy Commander, USACE</i>                               |
| 10:30-11:15 | <b>In the Client's Shoes</b><br>Terry Kelley, <i>Counsel Great Lakes and Ohio River Division</i>                              |
| 11:15-12:00 | <b>AR 15-6 Investigations</b><br>Ken Powers, <i>Senior Counsel for Ethics and Procurement Fraud, HQUSACE</i>                  |
| 1:30 - 2:00 | <b>Career Management Committee</b><br>Bob Mahoney, <i>Counsel Northwestern Division, Missouri River Regional Headquarters</i> |
| 2:00-2:30   | <b>Training Committee</b><br>Tom Burt, <i>Mobile District Counsel</i>   |
| 2:30-4:30   | <b>Vision/Strategic Plan Workgroups</b>   |

provided by counsel. In addressing its task the workgroup was mindful of the potential perception that counsel might be trying to fence its resources. Therefore, the group focused on developing counsel legal resources to meet changing needs by identifying the impact of eliminating legal services being provided, solving the matter elsewhere, and impact of legal services delivery on mission and project execution. Because each legal office provides a wide array of services, the group determined that developing a standardized organizational structure would not be feasible. A flexible approach tailored to the needs of the organization was considered more appropriate and defensible.

Mr. Burt reported on the five products his group has completed to date. They include (1) a workgroup report for the Chief Counsel; (2) the Legal Functions database; (3) an analysis of acquired legal services

(counsel outsourcing and consolidation options); (4) a staffing principles paper (a guide to determining manpower requirements for identified Counsel functions); and (5) the "Roadmap," an automated toll which links the legal functions database to the acquired legal services analysis. Patty Vatter provided a demonstration of the Roadmap. It enables users to sort legal functions based on a District's Mission, e.g., civil functions only and to search for the basis for performing the missions and/or functions. For example, the Roadmap can provide a link with the applicable law or regulation and can produce a full text document.

The Legal Functions database, the acquired legal services analysis and the Roadmap are resident on the CEALS Homepage. The Web address is:

[www.ceals.usace.army.mil](http://www.ceals.usace.army.mil)



## The Chief's Vision and Strategic Plan


**MG Albert Genetti** briefed on the Chief's Vision and Strategic Plan. The Army vision is to be trained and ready, values based, and an integral part of the Joint team. The Chief's vision for the Corps is based on the Army vision. It is based on being a vital part of the Army, the Engineer team of choice, and a values-based organization. The Chief's Master Strategy for this vision is based on Corps Plus--revolutionizing effectiveness, seeking growth opportunities, and investing in people

To implement the Corps Plus strategy, the headquarters leadership developed a campaign plan. The leaders of each top office divided into eight groups for each of eight tasks. MG Genetti focused primarily on two of the teams.

Team #1, Life Cycle Management for Army Facilities, will focus on increasing support to installation DPW's and introducing life cycle management concepts and practices into Army's facilities and environmental programs. This will revolutionize effectiveness, provide greater customer satisfaction, and serve the Army better by seeking growth opportunities.

Team #2, Support to Operational Forces, will focus on enhancing USACE support to operational forces by defining USACE roles and missions, evaluating missions versus doctrine and capabilities, establishing funding strategies, and developing headquarters concepts of operations. This will improve horizontal integration into HQUSACE, stabilize funding for USACE support, build strategic commitment, and revise Army/Joint doctrine for USACE support to operational forces. The underlying logic: One Door to the Corps.

From today forward, the USACE Strategic Plan will work toward being the first truly integrated USACE strategic plan--one vision, one plan, with multiple campaign/OPLANs. This work will work around scenarios, market analysis and Corps competencies.

The Corps of Engineer's Vision & Strategy: THINK "CORPS PLUS!" 

## AR 15-6 Investigations

**Ken Powers**, the HQ USACE Ethics Counselor, briefed the conferees about the requirements of AR 15-6. AR 15-6 describes procedures to be used for conducting investigations not authorized by other directives. The authority for these investigations is the commander's inherent authority to inquire into any matter relating to his command.

Both formal and informal investigations are authorized by AR 15-6. Investigations can be conducted by either a single investigating officer or a board of officers. In the majority of cases, an informal investigation conducted by an investigating officer is sufficient. Mr. Powers emphasized that only in rare situations, where the issues are very complex or the matter extremely serious, is a board of officers needed to investigate a matter.

Until recently, appointing authorities for formal investigations included general officers, any commanders or principal staff officer (O-6 and above), and general and special court-martial convening authorities. Informal investigations could be appointed by anyone authorized to appoint a formal investigation and any commander, regardless of rank. A recent change to AR 15-6 now allows civilian supervisors, GS 14 and above, who are either the head of an Army agency or activity or a division or department chief, to appoint formal investigating officers or boards. The change also allows civilian employees, GS 13 and above, to be appointed an investigating officer, in addition to commissioned officers previously authorized.

Mr. Powers indicated that respondents may be named in the memorandum appointing investigating officers or boards.

are suspected of misconduct and it is deemed desirable to provide them with the procedural safeguards of the Fifth

dents are entitled to confront all witnesses testifying against them and to be represented by military counsel (JAGs)

respondents only when adverse action may be taken against them without further procedures (e.g. adverse personnel

During the question and answer period, it was pointed out that if another directive requires the conduct of an

standard, then the requirements of both regulations or directives must be met. Also, in a change of policy, the DAIG

included in an AR 15-6 investigation. ⚖️

***If another directive requires the conduct of an investigation and specifies AR 15-6 as the procedural standard, then the requirements of both regulations or directives must be met.***

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## In the Client's Shoes

, Great Lakes and Ohio River Division Counsel, described his recent temporary assignment as Acting

Deputy during a time of changes, when the Division was implementing CEFMS, dealing with Division Restructuring,

experience, noting that the most important issues he faced concerned money, people, and authority. Mr. Kelley noted

learned to think differently, going beyond a strictly analytical application of the law to fact situations. Terry forged new relationships with other senior staff; they saw him as more than a lawyer and he got a chance to see law "from the outside." Most importantly, Mr. Kelley gained the experience of serving in a decision making role, including program responsibility. He feels he'll be a better lawyer and will be better able to serve his clients as a result. ⚖️

## Career Management Committee


During the awards banquet Thursday evening, the first Keystone Award, an award developed by the Career Management Committee to honor nonlawyer professionals supporting the legal services mission, was presented to Patsy Knight, a paralegal in the Southwestern Division. The development and presentation of the Keystone Award was one of the initiatives that **Bob Mahoney**, chairperson, included in his report from the Career Management Committee.

After only four meetings since the reformulation of the Committee, the following products were briefed to the legal services managers: generic paragraphs to describe support staff functions to assist managers in developing and grading support staff positions under the new classification procedures; a revised attorney classification supplement incorporating recent OPM decisions on classification of attorneys in counsel and real estate offices; a draft revision of the Employment of Attorneys Regulation; and recommendations for ten initiatives to enhance career development in the legal services program.

Five of the recommendations focused on formal and informal methods of enhancing the communication and interaction with attorneys in the Real Estate directorate. These include:

- enhance mutual counsel and real estate awareness of legal issues
- preserve and develop quality of real estate attorneys
- provide recognition of real estate attorneys
- define real estate attorney professional evaluation criteria and procedures
- include real estate legal services information in orientation materials.

In addition to the support staff award and job paragraphs, the committee recommended that a support staff member be appointed to the training committee and that the training policy be revised to include support staff members.

Finally, Mr. Mahoney presented an update on the Grade Statistics on Corps attorneys. 

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# Training Committee Update

**Tom Burt**, Chairman of the Legal Services Training Committee provided an update on recent committee activity. The Training Committee held its first meeting on 17-19 September 1996 at Fort Belvoir, Virginia.

The committee has established work groups to focus on:

- (1) Attorney Recruitment for Instructors  
*(Adams, Korman)*
- (2) Course Development  
*(Burt, Kingsley)*
- (3) Attorney and Support Staff Training Policy and Overview  
*(Goodenough, Purcell, Schmauder).*

Additionally, the committee proposed a revised Training Committee mission statement and established goals and objectives for its activities, including but not limited to reviewing and updating the Chief Counsel's training policy, developing minimum training needs for Corps' attorneys, developing courses as necessary, and projecting and advising the Chief Counsel on future training needs to support accomplishment of USACE Missions.

Mr. Burt also reported that the committee is exploring the benefits of developing and conducting a District Counsel Symposium. There is currently no training vehicle to teach District Counsels what they need to know about how to be a District Counsel (e.g., technical matters, legal office management, budget preparation, etc). The Symposium would also be an opportunity for District Counsels to share problems, suggest approaches, and share lessons learned on a horizontal basis without the pressure of Division and Headquarters involvement. The Chief Counsel encouraged round table discussions within Divisions as well as across Division lines. One of the attendees pointed out that the symposium or round table format facilitates the "One Door, to the Corps" concept.



## Privatization and Capital Venture Initiative

**COL Henry A. Leonard** discussed the Army's Outsourcing and Privatization (O&P) Program which, according to COL Leonard, is "viewed by some as the greatest thing and, by opposition, as a threat to mobilization." The purpose of the O&P program is to achieve efficiencies and free up resources to be used for other purposes. The Army program has already achieved \$8.8 million in savings that have resulted, not from O&P, but from rearranging grade structure, acquisition reforms and flattening layers. These efficiencies have been reprogrammed. COL Leonard cautioned that O&P savings should not be reprogrammed until they are achieved.

He indicated that the Army recognizes that not all functions are appropriate for contracting out. Soldiers in the field and Headquarters functions -- and other functions that are governmental in nature-- should not be contracted. However, the Army is "re-looking at the coding of positions to ascertain whether they are governmental in nature." Currently there are 48,000 positions that can be contracted out without recoding.

The lions share of savings in the O&P program are expected to be achieved in base operations and commercial activities. The O&P program is beginning studies which are anticipated to span 1 1/2 to 2 years from the beginning of the study to implementation at Army Material Command and Forces Command. An installation at both major commands has been selected to identify a contractor to take the keys to the installation and run it, including managing the base operations. "There will still be an installation commander, but he will look to the contractor for all base operations issues," explained COL Leonard.

In materiel management, the objective of the Army O&P programs is to have contractors develop and field weapon systems and have continuing responsibility for the life cycle maintenance of the system.

Saving money is not always the goal of the Army O&P program. In Army education and training, the Army hopes to implement systems learning provided by contractors at the installations. This program would allow soldiers to remain at the installation in their job and obtain training on site. This reduces TDY expenses, but the purpose of this contracting initiative is to save soldier's time and to keep the soldier available for duty at the installation.

Other areas being reviewed for outsourcing include transportation of household goods, other logistics, LOGCAP (logistic support to mobilized units) and job order contracting.

The Army is studying privatization of family housing. The plan is to turn over the Army's housing stock at an installation to a contractor who would be responsible for operation and maintenance of existing housing and construction of new housing. The objective is to provide sufficient incentive to the contractor to maintain the family housing on a 5 to 10 year schedule in lieu of the Army's current 68 year maintenance schedule. "This is the type of maintenance that gets deferred under Army management," COL Leonard said.

*(continued on page 14)*

### AGENDA

- 8:00-9:15 **Privatization and Capital Venture Initiative**  
COL Henry Leonard, *Director Outsourcing and Privatization Office, ACSIM, HQDA*  
Gary Henningsen, *Omaha District Counsel*
- 9:15-10:30 **Military Programs: Issues and Implications**  
BG(P) Phil Anderson, *Director Military Programs, HQUSACE*
- 10:45-12:00 **Civil Works Program: Issues and Implications**  
John D'Anielly, *Deputy Director Civil Works, HQUSACE*
- 1:15-2:15 **Handling GAO Bid Protests**  
Behn Miller, *Senior Attorney, GAO*
- 2:15-3:15 **FAR Part XV Rewrite**  
Steven Schooner, *Associate Administrator for Procurement Law and Legislation, OFPP*
- 3:15-4:00 **The Lawyer as Crisis Manager**  
Tom Taylor, *Senior Deputy Army General Counsel, OPS and PERS*

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## Privatization, *continued*

Privatization is also planned for Army utilities. Twelve systems are already privatized and all gas and 75% of other systems are scheduled for privatization by FY 2003. "Currently Army utility systems are so deteriorated the Army has been advised to turn them over to contractors without reimbursement," explained COL Leonard. The contractor would replace them and provide the service to the Army. Cost avoidance, rather than cost savings are expected to result from utility privatization.

In response to a question, COL Leonard indicated that the current A-76 program is the process used to determine whether a function "should" be outsourced or privatized. The Army O&P program "is not a bogie drill. It is an aggressive effort to find savings where they can and should be achieved," said COL Leonard. He also indicated that once a function is outsourced or privatized, "there is a process for bringing it back in if it turns out not to have been a good idea."

**Gary Henningsen**, Omaha District Counsel, discussed Omaha District's experience, thus far, with privatization of housing at Ft. Carson, Colorado. Currently, many problems exist with the housing situation for military personnel at Ft. Carson. The on post housing is old and dilapidated, and therefore, few soldiers choose to live on post. However, the nearby city of Colorado Springs has extremely low vacancy rates which has driven up rents in the area. The goals of the privatization plan are to (1) increase the quality of life for military personnel, (2) increase readiness through retention, (3) encourage renovation up-front, (4) solve the

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*The goals of the [Fort Carson] privatization plan are to (1) increase the quality of life for military personnel, (2) increase readiness through retention, (3) encourage renovation up-front, (4) solve the housing problem at Ft. Carson quickly (10 years not 30 years), and (5) increase the privatization of family housing.*


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housing problem at Ft. Carson quickly (10 years not 30 years), and (5) increase the privatization of family housing.

Mr. Henningsen also discussed some of the new tools available to DoD to implement housing privatization found in Chapter 169 of the 1996 DoD Authorization Act. The legislation provides for government loan guarantees to persons in the private sector who build military housing (Section 2873), as well as government guarantees to these entities of occupancy levels (Section 2876). The legislation also permits the government to directly rent housing facilities from the private sector (Section 2874). The government may invest up to 33 in nongovernmental entities carrying out projects for the acquisition or construction of military housing (Section 2875). This investment can be in the form of a limited partnership, debt instrument, or stock.

The program at Ft. Carson involves the government transferring title to the existing 1824 housing units to the successful offeror for renovations.

The program also includes the construction of another 840 units as well as support facilities. The new units will be built to local standards, and therefore, the use of specific construction specifications is avoided. Mandatory assignment of military personnel to these units will be permissible.

Mr. Henningsen then briefly raised some of the legal issues he has encountered thus far with the program. Specifically, he addressed the acquisition issues presented by the program such as the applicability of the FAR (determined not to apply), the type of contract vehicle used (service contract), the applicability of small business goals and subcontractor goals, determination of the proper wage rates, and the impact on existing contracts. He also raised several other miscellaneous issues which have developed such as the applicability of property taxes, the impact on local school districts, providing for police and fire protection, and the establishment of escrow accounts for the related real estate transactions. 

## Military Programs Overview

**BG(P) Phil Anderson**, Director of Military Programs, HQUSACE, gave a very dynamic overview on MP trends, priorities, and re-engineering installation support. He also included a briefing on “One Corps, One Regiment, One Fight.”


“One Corps, One Regiment, One Fight” means that all parts of the Corps must work together. It is an imperative to have complimentary working relationships. We also must fit this concept into the National Security Strategy, Joint Vision 2010, and Army Vision 2010. The unified Corps’ regiment vision calls for a trained and ready, rapidly deployable and versatile member of the strategic force combining efficiencies of information with physical and technical capabilities, to master terrain in support of decisive victories. The Corps is one member of the engineering regimental gear box. That gear box also includes TDA, USAES, ARNG, USAR, DPW, TOE, and contractors.

The engineering functions to be performed by the components, including new initiatives, are broken down

and assigned in a matrix. One new initiative is “tele-engineering”; this concept involves using cameras and communications methods to allow engineers off-site to provide detailed, accurate advice to the engineers on the ground. Another initiative is to promote the One Door to the Corps concept by allowing any customer to reach out to the Corps through one office.

The trends and priorities of military programs have varied over the years. The military programs workload peaked in the mid-1980’s. Since that time, the focus of military programs has changed and the volume of work decreased. From FY97 to FY98, the total military programs budget authority has decreased by over \$1 billion.

The Army’s priority for military programs is BRAC, followed by strategic mobilization, barracks modernization, Army family housing, and environmental efforts. Areas of emphasis in military programs are program execution, restructuring installation support, the capital venture initiative, LOGCAP, and the environmental program.

The re-engineering installation support initiative focuses on the contributions the Corps can make to the facilities and environmental areas. Army facilities are big business--\$6+ billion, 10% of the Army budget, 269 installations, and 44,000+ of DA civilian personnel. The problems facing the installations are insufficient resources, competing demands, too many players, too many handoffs, and conflicting prioritization. The way to handle these problems are better uses of limited resources and better life cycle management. The alternatives for doing this are currently being considered. One alternative is to create an Army staff agency called Deputy Chief of Staff for Facilities and Environment (DCSFE). Another alternative is the Installation Support Concept, wherein the installation commanders and USACE would control different aspects of public works directly through a public works service center, instead of by contracting them out. 

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## Civil Works Overview

**John D’Aniello**, Deputy Director, Civil Works, HQUSACE, gave an overview highlighting areas such as: A/E contracting; restructuring the Corps’ organization, processes and culture; and a technical review.

The Civil Works budget is growing. The requested construction general appropriation has grown from \$1,082 million to \$1,393; however, this increased figure is deceptive, as it includes other types of expenditures that were not previously included. The requested operation and maintenance appropriation has decreased and will continue to decrease. The requested general investigations appropriation has also decreased, while the requested appropriation for the regulatory program has increased. While striving to assist the Federal government to balance the budget, we must maintain new project developments, infrastructure development, environmental stewardship, ongoing construction and new work, and continued support of civil works projects.

The Corps’ organizational restructuring is proceeding. HQUSACE work is ongoing. The plans for the divisions have been approved, and implementation is underway. The districts continue to operate under the task force report and test division guidance. The new paradigm: ensuring solid, robust programs in the eight new divisions by the proper use of resources. The Corps’ restructuring of processes is also proceeding. Section 211 of WRDA 96 has changed some of these processes. The culture in the Corps will also change.

The Water Resources Development Act of 1996 authorizes 44 new projects with a potential investment of \$5.2 billion. It includes increased cost sharing for flood control and requirements for local flood plain management. It also includes expanded environmental programs and non-structural flood control. Model agreements and ER’s must be drafted to ensure proper implementation of these programs. The Civil Works Directorate is now working on WRDA 98.

The counsel role for decision documentation and other issues must increase. When legal issues are identified in a document being sent up to HQ, a legal opinion should be attached. The status of several legal issues must be determined and settled as quickly as possible. Those issues include the Harbor Maintenance Trust Fund, regulatory

program issues such as the *Tulloch* ruling, reissuance of nationwide programs, the administrative appeals process, and consistency of operation among districts.

The Civil Works focus: relevance to the nation and the Army, ensuring growth opportunities, an enhanced role as problem solvers, maintaining steady funding, working toward a balanced environment, and delighting customers. ⚖️

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## Handling GAO Protests

**Behn Miller** of the GAO provided a presentation on GAO bid protests. Ms. Miller complemented the Corps in the manner in which it handles its procurements and bid protests. In FY96, only 3 protests involving Corps solicitations were sustained out of the 95 protests filed. Thus far in FY97, only one protest has been sustained out of the 78 filed. Ms. Miller also noted that the Corps, in the few protests that have been sustained, was helpful to the GAO in developing precedent.


Under the Administrative Dispute Resolution Act of 1996, three venues exist for contractors to bring protests. The first venue is the GAO which has a 40 attorney staff available to adjudicate bid protests. The GAO applies a reasonableness standard to an agency's procurement decisions. The second venue is the U.S. Court of Federal Claims which applies the same review standard as the GAO. The third venue is Federal District Court which also applies the GAO's reasonableness standard. Federal Information Processing protests which were formerly the jurisdiction of the GSBGA are now being made at the GAO. Offerors are apparently finding litigating in federal court too expensive.

The number one basis for protests according to Ms. Miller is an agency's decision to award a best value procurement. A strong, proactive relationship between the contracting officer and his or her attorney is the best method of effectively defending against such protests.

Ms. Miller then discussed the FAR's new debriefing requirements. These debriefing requirements are proving to

be an effective means of avoiding protests. Following receiving notice of an award decision, and unsuccessful offeror has three days to request a debriefing by the agency. FAR 15.1006(a). If a debriefing is requested, the agency has five days to perform the debriefing. FAR 15.1006(a). Following the debriefing, the contractor has five days to bring a protest to the GAO. A disappointed bidder cannot protest to GAO without requesting a debriefing. The FAR requires that the agency provide reasonable responses to the bidder's questions during the debriefing. According to Ms. Miller, the more information the agency provides the better. For example, the contracting personnel at Wright Patterson Air Force Base have been sending the

entire source selection team to the offeror to perform the debriefings in complex best value procurements.

Finally, Ms. Miller discussed the GAO's new ADR initiatives in the bid protest area. She recommends that an agency always request that the offeror engage in an ADR if a protest is suspected. The GAO will provide the agency and the offeror with a neutral review of the protest grounds. Thus far, GAO has performed 66 ADRs and experienced an 89 percent effectiveness rate. GAO considers not having to publish a written decision an effective ADR. Even if a protest is sustained following an unsuccessful ADR, Ms. Miller indicated the GAO would not likely award the protester preparations costs and attorney fees. 

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# FAR Part 15 Rewrite

Steven Schooner, the Associate Administrator for Procurement Law and Legislation for OFPP, provided an overview of the functions and structure of OFPP and discussed the FAR Part 15 rewrite. OFPP is an arm of the Office of Management and Budget (OMB) which in turn is part of the Executive Office of the President. OFPP's operating statute is 40 U.S.C. §§ 401-430. The three main divisions within OFPP are procurement law and legislation, cost accounting standards, and procurement innovation. Procurement is currently a highly visible topic with the administration as OMB attempts to integrate its budgetary and management functions. In making procurement policy, OFPP attempts to balance the public's interest in fairness, due process, and competition with its desire for efficiency and quality at lower prices.

Mr. Schooner discussed the emerging changes in federal procurement culture. Changes that he has noticed are that agencies are becoming increasingly empowered as the deference to contracting officers' business judgment has increased. In particular, the primary goal of the FAR Part 15 rewrite is to encourage contracting officer to engage in "hard bargaining." This is accomplished by increasing the emphasis on past performance while decreasing the best and final offer (BAFO) negotiation cycle. Specifically, a contracting officer can discuss past performance with the offerors and still award a contract based on an initial offer.

The purpose of the new FAR 15.406(c)(1) is to decrease the number of offerors in the competitive range. Contracting officers should

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limit the competitive range to those offerors who are most likely to win the award. The goal is to change the old standard of when in doubt include an offeror in the competitive range. Eliminating contractors from the competitive range is viewed as efficient from the agency's and the offeror's point of view. The FAR 15 rewrite also encourages expansion of communications between agencies and offerors. FAR 15.406(b) and 15.103 encourage contracting officers to accept oral presentations from offerors. Under the new FAR 15.208(c)(3), a contracting officer can accept an offeror's late proposal if the reason for the proposal's late receipt was beyond the control of the offeror. If such a proposal is accepted, however, the time for submittal must be similarly expanded for all participants.

Mr. Schooner then turned the discussion to the current socio-economic procurement environment. The federal government has been effective in achieving its small business goals but is far from achieving its goal of awarding 5 percent of its contracts to women owned businesses. The D.C.

Circuit Court's recent decision in *Dynatlastic Corp. v. Dept. of Defense*, No. 96-5260, 1997 U.S. App. LEXIS 13622 (DC Cir. 1997) has opened the way for a possible judicial finding that the 8(a) program is unconstitutional. Legislation may be coming that authorizes "empowerment contracting" which involves awarding government contracts to offerors located in high unemployment areas. Other legislative initiatives that are being considered involve raising the government small business participation goal from 20 to 25 percent and creating incentives for government contractors to hire individuals presently on welfare.


Mr. Schooner concluded by discussing the attorney's role in the changing procurement environment. Attorneys must actively keep up with the changes in the procurement rules and promote their use. Specifically, he encouraged attorneys to promote best value contracting and increasing customer satisfaction. Finally, attorneys must be an ally to the contracting officer throughout the procurement process and keep OFPP informed of the "view from the trenches." 

## The Lawyer as Crisis Manager

**Tom Taylor**, Senior Deputy General Counsel (Operations and Personnel), gave a dynamic presentation on lawyers as crisis managers. He noted that lawyers now have more control than ever over decisions the Army makes, and that it is important for lawyers to provide both legal and policy advice. He believes that the Army leadership turns to its lawyers during crises because attorneys are trained to think logically and examine facts dispassionately; they can take the long-term view, considering precedents; and they serve as “honest brokers” who “have no dog in the fight.”

Mr. Taylor described his experiences in handling several crises in the Army, and he offered the attendees five practical tips. First, never be the only lawyer to know there’s a crisis. It is important to talk with others and to know where to look for help. Often, others can help to “size” the crisis by sharing their own experiences in handling similar situations. It is also important to advise higher headquarters when something happens; if you wait until you know all the facts it may be too late.

Second, always test advice during a crisis by “how will this look when I explain it to higher headquarters, the Inspector General, the Justice Department, Congress, etc.?” Remember, when the stakes are high enough others will be interested. Third, always look around for someone to report the crisis to. If you do, you can never be accused of engaging in a cover up. Moreover, if you report the crisis, you get to frame the issue and to set out a time line for handling it. Fourth, you need to have a short term and a long term plan that includes investigation and review. Finally, think about accountability from the beginning.

Mr. Taylor concluded that the bottom line for handling crises is to use common sense. We all need to listen to each other and to take advice from each other. 

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*The Army leadership turns to its lawyers during crises because attorneys are trained to think logically and examine facts dispassionately; they can take the long-term view, considering precedents; and they serve as “honest brokers” who “have no dog in the fight.”*

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# Research and Development Issues

**Dr. Donald Leverenz**, Assistant Director of Research and Development for Military Programs, described the Corps' Research and Development Program total engineer support to the Army and the Nation. Corps R&D efforts include support to infrastructure, environment, water resources, mobilization, training, deployment and sustainment. He described some of the unique facilities and research at the Corps four world class laboratories, the Waterways Experiment Station, Topographic Engineer Center, Construction Engineering Research Laboratories, and Cold Regions Research and Engineering Laboratory.

In discussing support to the Army, Dr. Leverenz presented the practical application of the R&D support to the Army's

Installation Investment Strategy. The bottom line is that "the Army can meet installation needs, but can not afford the current technology," he explained. The R&D approach to installation support is called the "Gap Investment Strategy" which involves using industry to solve problems that can be addressed with typical industry solutions and directing our R&D efforts at developing technologies for problems unique to the Army. Heating and air conditioning controls were an example where the Army will adapt industry technology, save money, and save time.

R&D support to Army training requires a fine balance between environmental stewardship and military training and readiness. Dr. Leverenz described R&D programs that reduce the costs of environment site assessment and cleanup by 50 % or more, detect explosives, fuels and solvents, destroys contaminants, and automate post cleanup monitoring capability.

During his discussion of Data Visualization and Battlespace Environment, Dr. Leverenz displayed fascinating graphics and talked the audience through our scientists' successes in improving the soldiers' ability to anticipate and visualize the terrain features that surround them. The significance of mapping and technology is to create a map which will allow a soldier to know exactly what he will encounter, not just where he is.

Because much of their mission is to provide support to the Army operations, the R&D Directorate was selected to lead the Chief's Vision Initiative Team 2 — Support to Operational Forces. The focus of their effort is to enhance support to operational forces. They intend to "develop a revised Army/Joint doctrine covering USACE support to operational forces, improved horizontal integration of support in HQ

USACE, and stabilized funding for USACE support," Dr. Leverenz projected.

The R&D campaign plan in support of the Chief's Vision includes a realignment of Command, Management and Structure among the Corps laboratories. The objectives of the realignment are "increased efficiency, enhanced corporate approach to technology development, a customer focused technology management, and maintaining existing World Class stature of our laboratories," Dr. Leverenz explained. R&D is evaluating the creation of a single USACE technology organization that reports to the Deputy Commanding General. It would be comprised of Technology Centers that would provide full spectrum technology support to the customer. Installation support functions would be consolidated into an installation command.

Following his presentation, Dr. Leverenz invited the laboratory counsel to discuss one or more significant legal issues at their laboratories. Bill Lovelady, from the Waterways Experimental Station, discussed the development, patenting, and licensing of the Core-loc breakwater structure which is expected to earn millions of dollars in royalties for the Corps of Engineers. Bill Woodard emphasized partnering opportunities between the laboratories and districts and divisions. He talked briefly about a successful Cooperative Research and Development agreement with Louisville District, his laboratory, and industry partners in developing a major Modular Design System for military programs. Rick Frenette, of the Topographic Engineer Center, discussed their center's consideration of using the unique R&D "Other Transaction Authority" which has never been used previously in the Corps. ⚖️

## AGENDA

- 8:00-9:00 **Research & Development: Overview**  
Dr. Donald Leverenz,  
*Asst. Director Military Programs, R&D Directorate, HQUSACE*
- 9:00-9:15 **Video: The Army Vision 2010**
- 9:15-10:15 **An Unconventional View of Bosnia**  
COL William Mulvey,  
*Chief, Office of Public Affairs, HQUSACE*
- 10:30-11:30 **Civil Works Project Documents**  
Howard Goldman, *Senior Counsel for Civil Works, HQUSACE*
- 11:30-12:15 **Non-Structural Emergency Flood Measures**  
Ron Allen, *Senior Asst. Chief Counsel for Legislation and General Law, HQUSACE*
- 1:30-1:40 **Video: Combat Engineers "Like A Rock"**
- 1:40-2:30 **The Army Vision and Quadrennial View**  
William T. Coleman, III  
*Army General Counsel*
- 2:30-4:30 Hot Topics Discussion

## Civil Works Project Documents

**Howard Goldman**, Senior Counsel for Civil Works, discussed the changes in the approval process for Civil Works decision documents and agreements. Several resources for these documents are available on World-Wide Web. Model Project Cooperation Agreements (PCA) are maintained on the legal services homepage located at: <http://www.hq.usace.army.mil/cecc/ccpca.htm>.

The Directorate of Civil Works maintains PCA guidance and status information on their homepage located at:

<http://www.usace.army.mil/inet/functions/cw/cecwa/pcapage.htm>.

Additionally, current Civil Works policy information can be found on the Civil Works "Hot Page" located at:

<http://www.usace.army.mil/inet/functions/cw/cecwa/hotpgbun.htm>.

Mr. Goldman then compared the new review process for civil work project documents to the old system. Under the old system, the Board of Engineers for Rivers & Harbors (BERH), HQUSACE, and ASA(CW) all provided policy and technical review of such documents, as did Divisions. BERH was later replaced with the Washington Level Review Center (WLRC) which, along with HQUSACE and ASA(CW), continued to perform policy and technical review of Civil Works project documents. Under the streamlined system which was implemented in 1995, technical review now occurs at the District, and quality assurance of the technical review is performed at the Division level. Policy compliance review is now only performed at the headquarters level by the Policy Compliance Review Team

(PCRT). Quality assurance for the policy compliance review is provided by the ASA(CW).

The PCRT reviews all project decision documents, PCAs, and all other agreements requiring headquarters or ASA(CW) approval. Project decision documents serve as the underlying basis for Congressional authorization of new civil works projects and also provide the details to support a PCA. The PCRT looks for policy compliance with respect to findings of federal interest, cost sharing, and items of local cooperation. The PCRT is comprised of representatives from Policy, Engineering, and Program Management Divisions from the Directorate of Civil Works, Office of the Chief Counsel, and Real Estate Directorate. Mr. Goldman then described the review process applied by the PCRT and the time line for reviews.

The presentation then turned to a discussion of the responsibilities at the Districts and Divisions for Civil Works project documents. Districts must ensure adherence to Project Guidance Memorandum (PGM) requirements. The District Counsel must perform an initial legal review and certify all decision documents.

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***The District Counsel should ensure issues are identified, addressed and resolved prior to submission of project decision documents to HQUSACE. Both the Chief Counsel and the senior leadership in Civil Works at headquarters support the PCRT returning project decision documents unreviewed to Districts that do not evidence the required legal review.***

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Districts are also responsible for conducting an independent technical review of decision and implementation documents which covers conformance with: established criteria, regulations, laws, codes, and principles and professional procedures. The technical review certification documents that engineering, real estate, environmental, and legal reviews have been accomplished. The certification should cite major issues raised during the review process and how they were resolved, as well as identifying the accountable review team. Additionally, the District is responsible for developing a quality control plan for the technical review.

The responsibility of the Division is to provide quality assurance. The Division should evaluate the District's independent technical review process, monitor the development and execution of the District's quality control plan, and approve quality control plans. The Division should also provide assistance to the District in resolving technical issues and audit the effectiveness of the technical review process.

Mr. Goldman then discussed problem areas that have arisen in the review

*(continued on page 22)*

# Non-Structural Emergency Flood Measures

**Ron Allen**, Senior Assistant Chief Counsel for Civil Works, and **Carl Korman**, Sacramento District Counsel, provided a presentation on non-structural alternatives to rehabilitation of flood control works. Mr. Allen eloquently discussed the history and development of non-structural alternatives to Corps of Engineer traditional flood emergency authorities, and the issues that are anticipated in implementing the new authorities. (Mr. Allen's remarks are published at (website address or hypertext)).

Mr. Allen stated that the Galloway Report, published earlier this decade, reexamined the flood protection efforts in the United States and made various recommendations. One such recommendation, Nonstructural Alternatives to Rehabilitation of Flood Control Works, is to use public money to relocate people and their more

permanent property away from the rivers and out of flood plains. In other words, use public money to move people and property out of harms way, rather than continuing to build and rebuild flood protection works. This program is popularly referred to as "buy outs" and has received strong support from the Administration and the environmental community.

Section 202(e) of the Water Resources Development Act of 1996 expanded the Corps' flood emergency authority to allow the Corps to expend civil works emergency funds in the repair or restoration of any threatened or destroyed flood control work "or in implementation of nonstructural alternatives to the repair or restoration of such flood control work if requested by the non-Federal sponsor." Thus, Congress has given the Corps a clear authority to implement

nonstructural alternatives to the rehabilitation of flood control works, but without any more statutory guidance than that which was quoted.

New regulations provide for nonstructural alternatives in lieu of rehabilitation of existing flood control structures when requested by the sponsor of those flood control structures and subject to a number of predeterminations listed in the regulations. If the request is viewed favorably, a nonfederal public agency or another federal agency must step forward to sponsor the nonstructural alternative, and that sponsor can be, but need not be, the sponsor of the damaged flood control work. Nonfederal interests are to operate and maintain the nonstructural alternative;


(continued on page 23)

## Civil Works Project Documents, *continued*

process. One problem is that the PCRT has little opportunity to work with Districts in developing documentation prior to its submission for review at headquarters. This has resulted in too much time being spent in Washington resolving issues which should have been resolved in the field. Other problem areas are the different approaches to technical review used in each District, the weakness of Division-level review, and the problem of dealing with Congressional adds for projects which have not had adequate decision documents to scope the project.

The roles of District and Division Counsels in the process were then covered. District Counsels should

become full fledged members of the review team early in the process. The District Counsel should ensure issues are identified, addressed and resolved prior to submission of project decision documents to HQUSACE. Mr. Goldman stressed that both the Chief Counsel and the senior leadership in Civil Works at headquarters support the PCRT returning project decision documents unreviewed to Districts that do not evidence the required legal review. Particular attention should also be paid to legal review of environmental compliance documents including Environmental Assessments (EA), Environmental Impact Statements (EIS) and Findings of No Significant Impact (FONSI). Mr. Goldman then emphasized the

importance of the District Counsel's role in reviewing PCAs and other agreements and encouraged field attorneys to attend the PCA PROSPECT Course and other Civil Works courses. Mr. Goldman concluded by discussing the Division Counsel's quality assurance and project management roles in the review process. The Division Counsel should verify that District Counsel staff have proper training and should periodically review the District's work product. Finally, the Division Counsel should ensure that applicable policy guidance is available to the District and serve as an active liaison between HQUSACE and the District in the review and approval process. 

## Non-Structural Emergency Flood Measures, *continued*

provide funding for any nonstructural alternative costs that exceed the costs of the alternative that will be funded by the Corps; and accept the transfer of ownership of any lands acquired by the Corps and determined by the Corps to be necessary to implement the nonstructural alternative.

Nonstructural alternatives are enumerated in the regulations and include land acquisitions, removal of homes, removal protection and/or relocation of utilities, removal of flood control structures, modification of water flows, and habitat restoration. Completion of the nonstructural work will foreclose any further flood emergency assistance for the formerly protected area from the Corps of Engineers except for rescue operations. The current regulations limit Corps expenditures on these nonstructural alternatives to rehabilitating a flood control work to the lesser amount of what the Corps estimates that it might have spent to rehabilitate the affected flood control work or what the Corps estimates would have been the federal share of the benefits that would have been derived from rehabilitating the flood control work. The regulations invite all manner of authorized and justifiable additional assistance and contributions from other affected agencies to make up any difference over the Corps investment that is necessary to complete the nonstructural alternative.

The Federal authorities for nonstructural alternatives are Executive Order 11988, May 24, 1977, "Floodplain Management"; the Water Resources Development Act of 1996, section 202(e); and 33 U.S.C. sec. 701n. Corps authorities on the subject are ER 50-1-1, Natural Disaster Procedures, March 11, 1991; the

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Memorandum to Army Corps of Engineers from Director, OMB for Evaluation and Review of Levee and Associated Restoration Projects, dated Feb. 19, 1997; Memorandum for Commanders, MSC, from Chief, Operations Construction Readiness Division, CECW-OE-OR, Subject: Guidance on Application of OMB Procedures Concerning Levee and Associated Restoration Projects, dated Feb. 28, 1997; and two additional implementing regulations.

Carl Korman was one of the first Corps counsel to be involved in evaluating the use of non-structural alternatives for damages caused by the 1997 flooding in California. Approximately 40 levee breaks occurred in project levees which were repaired to 25 year flood protection. Approximately 62 subbasins are identified for rehabilita-

tion to their original level of flood protection. The proposal at the San Joaquin River is sponsored by the Fish and Wildlife Service (FWS) and the Natural Resource Conservation Service (NRCS). They will seek appropriations to fund the non-structural alternatives. NRCS proposed to buy flowage easements over the property not to exceed \$2000 per acre and FWS will buy the property in fee less the value of the easement. The challenges in California are made more urgent by the onset of the rainy season which begins on Oct. 1. They had only 9 months to decide whether to employ traditional flood repair measures or use non-structural alternatives. Non structural alternatives are being evaluated for four project areas on the Lower San Joaquin River and the Consumnes River. ⚖️

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# The Army Vision and Quadrennial Review

**William Coleman**, the Army General Counsel, addressed the conference about the Army Vision and the Quadrennial Defense Review (QDR). The QDR is the fourth congressionally mandated review of the military since World War II. The purpose of the QDR is to determine the nation's defense strategy and force structure for the Year 2015. The first goal of the QDR is to identify the nation's strategic environment. The QDR notes that the role of the military has dramatically changed since the end of the Cold War. Our defense strategy has changed from one of containment to full fulcrum defense. This strategic transition has been made as the size of the military and its budget have been dramatically decreasing. The overall defense budget has decreased 38 percent since 1985 and personnel levels have decreased by 33 percent. While our nation faces no clear enemy, regional dangers and domestic threats are increasing. Additionally, the proliferation of technology around the world poses additional security risks. Although the overall threat to the nation has decreased since the Cold War, the use of force has increased. These changes in the strategic environment have directly affected the Army. The Army has moved from a threat based force to a full spectrum threat adaptive capability force.

The QDR recommends a defense strategy based on the following principles: (1) deter aggression, (2) prevent conflict, and (3) promote stability. These principles

require the military to have the capability to: (1) shape the strategic environment, (2) respond to a full spectrum of crises, and (3) prepare now for an uncertain future. The QDR also recognizes that budgetary resources are more likely to decrease rather than increase in the foreseeable future.

Mr. Coleman then discussed the mission guidance the Army has received as a result of the QDR. The Army is facing a decrease in the active component of 15,000 individuals. The Department of the Army civilian force is anticipated to be decreased by 34,000 and the reserve component by 45,000. The Army took the largest hit of the armed forces in the QDR. However, the need for modernization was recognized and the Army anticipates stretching its budget further through gains in efficiency.

Mr. Coleman concluded by discussing the effect of the QDR on DOD attorneys. We should anticipate increased emphasis on privatization and commercial practices. Although lawyers were not specifically mentioned in the QDR for reduction, we are at risk. Therefore, we should strive to add value and remain relevant to the Army. We should seek to not be viewed as roadblocks but rather as valued team members. Mr. Coleman encouraged attorneys to sell their service to the Army, but to be cautious to maintain independent judgment. ⚖️

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## Ethics in a Downsizing Environment

**Ken Powers**, HQUSACE Ethics Counselor, discussed “Ethics in a Downsizing Environment” and briefed the recent changes to the ethics rules. The most significant changes occurred to the Procurement Integrity Act, the post employment restrictions and the personal use of Government E-mail and Internet resources.

Ethics in a downsizing environment is a complex and difficult subject. Budget driven reductions require more efficiency. “Do more with less” is the order of the day. As Mr. Powers pointed out, the Corps has identified its values, developed a vision and has created a strategic plan to achieve that vision. As an organization, we are doing all we can to manage change and to come out of this experience, more efficient, fully effective and stronger.

But what about “the Corps family.” During the last several years, one reorganization plan after another has been proposed, only to be scuttled at the last minute. Each of these plans threatened the job security of a

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different group of our people. We have finally implemented a division reorganization plan. But we still have district, laboratory and HQ reorganization plans under development and ongoing RIFs driven by funding reductions outside of any reorganization plan. What is the impact of this constant change and uncertainty on our employees?

Mr. Powers pointed out that all these reorganization plans and cuts have taken their toll on our people. They are upset by the constant change, or threat of change. They are concerned about their jobs and angry about past assurances that cannot now be fulfilled. They feel that they are not valued. Many have become cynical about their career prospects in the Corps. Morale has dropped, precipitously.

Mr. Powers referred to the experience of other organizations (e.g. GSA, AMC) that have undergone significant reductions. Employees were angry. Working relationships soured. Complaints (E.E.O., I.G., Hotline, Whistle

blower, etc.) doubled. Counsel, in addition to its normal roles, wound up providing quality control for contracting and other processes. Customer service suffered and quality dropped. Even when the downsizing was completed and the RIFs were over, hard feeling remained.

Mr. Powers suggested several things that we can do to minimize some of these problems. Leadership is the key to surviving a downsizing experience. It is imperative that commanders and senior leaders (including all of us) by their own conduct and official actions uphold the Standards of Conduct and the underlying ethical principles. Those ethical principles which have the most direct bearing on the problems of downsizing are:

**Honesty** - Honesty, of course, means telling the truth. It means more than not lying. It means sincerity and nondeception and, - if trust is going to be maintained, - candor.

(continued on page 26)

### AGENDA

- 8:00-10:00 **Ethics Update**  
Ken Powers  
Senior Counsel for Ethics  
and Procurement Fraud,  
HQUSACE
- 10:00-11:45 **Recap and Closing**  
**Remarks**  
Lester Edelman  
Chief Counsel, HQUSACE

## Ethics in a Downsizing Environment, *continued*

**Promise keeping** - Promise keeping builds trust. We must make all reasonable efforts to keep promises and other commitments.

**Respect** - Give people respect. They want their privacy, autonomy and dignity respected. They want to feel valued. It is a mistake to invalidate people's feelings by telling them that they shouldn't be upset, angry or afraid. They are upset, angry and afraid. We must deal with these emotions directly.

**Openness** - A willingness to share information and to listen to people is particularly important in a downsizing environment.

**Consistency** - During a period of constant change and uncertainty, consistency is also very important. Inconsistency creates even more uncertainty and should be avoided at all cost.

**Impartiality** - Impartiality is critical as everyone is looking around to be sure the other guy isn't getting some kind of unfair advantage.

**Integrity** - Integrity is also an ethical value of particular importance during a downsizing period. If our actions don't match our words, all credibility is lost.

Mr. Powers next discussed the changes to the ethics rules, starting with the changes to the Procurement Integrity Act. The changes to this Act became effective at the beginning of the year. The Procurement Integrity Act is much simpler now. Gone are "Procurement Officials," special training and certification requirements, terms like "during the conduct of a procurement" and "competing contractor" and special written approvals for recusal required from the HCA. What's retained are the basic prohibitions against unauthorized release of proprietary information and source selection data. The post employment restrictions have been changed from a prohibition against working on the contract for two years to working for the contractor. The new post employment restrictions arise only out of contracts in excess of \$10 million.

The post employment statutes have been changed, as well. 18 USC 281 and 10 USC 2397, 2397a, 2397b and 2397c have been repealed. Only 18 USC 207a and b and the post employment prohibitions of the Procurement Integrity Act remain. Now, the post employment restrictions for military personnel and civilian employees are the same, as the post employment restrictions for employees of DOD and non-DOD agencies.

Mr. Powers reviewed the rules pertaining to the personal use of Government E-mail and Internet resources of DOD employees. DOD, in the JER, has determined that limited personal use of E-mail and Internet resources is an authorized use. Such use may not adversely affect the performance of the employee's official duties or the employee's organization. Use of these systems must be infrequently and of short duration, so as not to overburden the communication system. More detailed rules for USACE employees are no being developed.

Lastly, Mr. Powers pointed out a couple of other changes to the ethics rules. 18 USC 205 has recently been amended to allow Government employees to represent organizations to the Government if more than 50% of the organization's membership is comprised of Government employees, or their spouses or children. Also the JER has been changed to allow gambling (e.g. lotteries) on Government property when conducted by organizations composed primarily of DoD employees, or their dependents, for the benefit of employee health, morale and welfare funds. ⚖️

The Chief Counsel closed the World Wide Legal Services Conference Friday morning with a message from the Department of Defense (DOD) on the Alternative Disputes Resolution (ADR) program, explained counsels' lead role on the Culture Change Vision initiative, and reemphasized Pride in Public Service.


On the opening day of the conference, Mr. Edelman attended a meeting hosted by the Secretary of Defense, on ADR. "Every key executive in DOD was advised that ADR is the way DOD will do business. ADR is already part of the culture of Corps lawyers. However, some customers of the Corps perceive ADR as a basis for giving away customers' dollars. The Chief of Engineers, a Corps customer in previous assignments, is testing counsel to see if we can defend the program," the Chief Counsel said. Mr. Edelman cited the docket at the Engineer Board of Contract Appeals as an example of the impressive results of ADR in the Corps. "The entire board now has the number of cases that each judge used to have," he said.

The Chief Counsel leads the culture change strategic Vision HQ Campaign Initiative. This campaign initiative team is coordinating with the other campaign initiative teams (whose initiatives were briefed throughout the conference) to identify the culture changes necessary in the Corps to achieve the Chief's vision. The Chief Counsel solicited the help of the legal services

community in accomplishing the team's objectives, "Monitor what's happening and tell us what kind of culture change you need. Communicate with us".

Mr. Edelman explained that the role of counsel is not just providing legal advice. "We are part of a bigger team," he said. He advised the legal managers to "ensure that you and your staff are relevant to the Corps. Counsel must be activists". Counsels' support to the development and implementation of the Chief's vision is an example of Counsels' support to a Corps non-legal initiative. The Chief Counsel advised the legal managers that he had provided copies of the Legal Service Task Force Recommendations and the District Counsel Task Force Report to commanders during the New

Commanders Course. He encouraged the managers to use these tools as an opportunity to meet with their commanders to begin a dialog about the role of counsel in the organization, as both counsel and senior policy advisors.

"I am proud to be in Public Service," Mr. Edelman re-emphasized. The Chief Counsel has presented his Pride in Public Service message at every appropriate opportunity since it lifted the spirits of a Corps audience during a command tour with LTG Hatch. His message was recently published in an article entitled, *Pride in Public Service*, in The Public Manager. The complete text of the article is published on the USACE Legal Services Conference Website at: [www.hq.usace.army.mil/cecc/conference/conf.htm](http://www.hq.usace.army.mil/cecc/conference/conf.htm) 

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# The Chief Counsel's Honorary Awards - 1997

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## The Spirit of Arrowhead Award

*The Spirit of Arrowhead Award recognizes the Corps of Engineers legal manager who best exemplifies excellence in service to clients and in leadership, and has made significant contributions to Corps-wide legal services. The name of this award refers to the prevailing ethos at the First Worldwide Legal Services Conference held at Lake Arrowhead, Georgia, in November of 1984 where all of the Corps managing attorneys first met. From this gathering, a shared commitment arose to provide leadership in our quest for excellence in client care. This award celebrates and reaffirms that Spirit of Arrowhead. Previous recipients of this award have been Steve Temmel, Wes Jockisch, Newt Klements, Bert Pettinato, Lloyd Pike, Chris Dowhan, Bill Hough, and Terry Kelley.*

This year's recipient was **Bill Lovelady**, Lab Counsel to the Waterways Experiment Station. Bill is recognized by his peers and clients for his motivation, commitment, and professionalism. He has demonstrated unparalleled enthusiasm for service to his client, the Corps, and its legal system. As part of the team providing legal support to the corps laboratories, Bill was instrumental in developing a novel approach to provide legal services across the labs. Each lab counsel will develop an area of expertise which will be shared across the lab community. This will enable the lab counsel team to provide the highest level of legal support to each lab without duplication of resources. Bill is recognized as an authority in complex international and agreement issues. His participation in international negotiations was instrumental in the return of state-of-the-art world-class equipment which had been captured in international receivership. His assistance in drafting and negotiating international patent licenses is anticipated to result in millions of dollars in royalty income for the corps in the next decade. His aggressive promotion of technology transfer highlights the relationship between research and development and success on and off the battlefield. He coauthored the r&d partnering handbook, a comprehensive guide which collects all research and development partnering authorities.

Bill is a corporate thinker and promotes programs and ideas that foster the growth of the corps legal services in support of client needs. In addition, he actively develops his staff and encourages their participation in corporate legal services activities.

Mr. Edelman added that "Bill is a real gentleman and an all around 'good guy'."

## **The George Wolfe Koonce Award**

*The George Wolfe Koonce Award is presented to an Army Corps of Engineers attorney to recognize the Outstanding Attorney of the Year. The Koonce Award is the highest Chief Counsel Honorary Award for legal achievement and professional performance, symbolizing the highest traditions of legal service established by the first legal advisor to the Chief of Engineers, "Judge" George Wolfe Koonce.*

*1997 saw two Corps lawyers deserving the title, "Outstanding Attorney of the Year."*

Throughout her distinguished career, **Anne Westbrook**, Senior Assistant District Counsel in Savannah, has provided the Corps superior legal assistance and guidance. Anne provides direct legal services to her clients and is responsible for professional oversight and counsel program management for the procurement and labor functional areas. She oversees the work of 5 attorneys providing the full range of legal services in support of one of the Corps' largest military construction contracting missions. She also provides expert legal advice and representation in very sensitive personnel matters. Anne's many accomplishments include authoring the first architect-engineer liability program in the Corps, which established legal standards of liability for a/e contractors that have benefitted the entire Corps. She successfully represented the Corps in several multi-million dollar contract cases, including Gulf Contracting, a landmark decision on expert testimony in delay/impact. She served as a valued member of my senior trial attorney team, which helped to design the trial attorney qualification program. Anne also serves as an instructor for the prospect contract law course, and she edits and publishes a preventive law newsletter in the Savannah District.

As a valued member of the headquarters policy compliance review team, **Howard Goldman** has done exemplary work in support of the Corps civil works mission -- providing both legal reviews as part of the policy compliance review process and playing a key role in the development of Corps policy positions on significant or controversial projects. Howard was instrumental the development of model project cooperation agreements and related agreements for civil works projects and in making the models available to all Corps team members via the Corps' legal services home page on the internet. He was also instrumental in establishing the requirement that district counsels review civil works decision documents as part of the required technical review of projects. He developed and taught a session on legal issues for the prospect course on PCAs. Howard has resolved complex issues on numerous projects around the country, and he provides expert advice and guidance on civil works issues to his clients and to his colleagues in the field.

## **The Joseph W. Kimbel Award**

*The Joseph W. Kimbel Award recognizes the Corps of Engineers attorney who has demonstrated, over a period of one year or more, the highest potential for future legal achievement in the Corps legal services system. This award symbolizes the continuing tradition of extraordinary professional potential and performance exemplified by Judge Kimbel, who served in the Corps with distinction for 43 years.*

The Kimbel Award is sometimes referred to as the "Rising Star" award. This year's "Rising Star" shines in Huntington, West Virginia. **Terry Clarke** recently served as lead attorney in an ADR proceeding with GLR Constructors, the contractor on the Gallipolis Locks and Dam Project. The contractor had filed \$38 million in claims. Terry did outstanding work in preparing for the ADR, making the government's presentation, and negotiating a settlement. He succeeded in settling the claims for \$9.5 million, an amount so low the GLR principal had to consult with his corporate board because the amount was below his settlement authority. Terry's professional potential is further illustrated by his receipt of an L.L.M. with highest distinction from the George Washington University. Terry also serves as an instructor at prospect regulatory courses and as a valued member of the Career Management Committee.

## **The E. Manning Seltzer Award**

*The E. Manning Seltzer Award recognizes a Corps attorney who has made one or more special contributions to the Corps legal services mission. The contribution may result from the development of a legal theory or application in any field of law, legal management innovation or practice, or outstanding performance in solving a legal or management problem. The award is named for E. Manning Seltzer, who served with prominence as the Chief Legal Advisor to the Chief of Engineers and as General Counsel of the Corps from 1956 until his retirement in 1977. Six Seltzers were presented at the Awards Banquet this year.*

**Jerusha L. White** of the Kansas City District excelled as the government trial attorney on three important consolidated contract appeals at the Armed Services Board of Contract Appeals, Appeals of M. A. Mortenson. The appeals involve three separate construction projects at Whiteman Air Force Base, Missouri. In each of the three contracts, Mortenson filed claims based upon the Corps' refusal to compensate it for field office overhead in pricing contract modifications and change orders that did not extend the time for contract performance. This complex issue of field office overhead has been one of great concern to both the Corps and the construction industry. This was a case of first impression, and last fall the board denied the appeals. The board ruled that a contractor must show actual cost increases in order to recover. This precedential decision will result in significant cost savings to our customers in the future.

**Arvis Freimuts** excelled in his representation of the Corps of Engineers' position in the litigation of a precedential lawsuit in the U.S. Court of Appeals for the Federal Circuit, Krygoski Construction Company, Inc. V. United States. The suit arose out of a contract for the demolition of buildings at an abandoned U.S. Air Force airfield near Racine, Michigan. Krygoski filed suit, alleging the Corps' action in terminating the contract for convenience was in fact a breach of contract. The Court of Federal Claims awarded Krygoski damages of \$1.4 million. The United States appealed. Arvis worked very closely with the Justice Department to organize the facts, research the law, write the appellate brief, and present the government's position to the judges at the Federal Circuit. In a very important decision, the Federal Circuit reversed the lower court's decision and ruled that, in order for a contractor to convert a termination for convenience into a breach of contract, the contractor must prove the government acted in bad faith. This decision is extremely important for federal procurement law as it affirms the wide discretion of contracting officers to terminate contracts for the convenience of the government.

## The E. Manning Seltzer Award, *continued*

**Robert Henson** of the Seattle District was recognized for his outstanding work in developing the Corps of Engineers Legal Services Deskbook and publishing it on the Internet. Robert, one of our unsung heroes in the Corps legal services system family, developed this remarkable product for all of us on his own initiative. As we all saw in the demonstration earlier this week, his internet-linked deskbook offers us the potential of putting an up to date compilation of our collective knowledge and practical experience on the desktop of every attorney in the Corps of Engineers. Robert has provided us a tool which, if used properly, can produce the kind of quantum leap in the efficiency and effectiveness of our legal practice that the advent of computer-assisted legal research provided in the '70s and '80s.

**Jim Brent** of the Transatlantic Program Center is recognized for his outstanding work in support of operation Desert Focus. After the June 1996 terrorist bombing of the Khobar towers facility near Dharan, Saudi Arabia, Jim voluntarily deployed for a 6 week period to work directly with our Arabian Gulf Regional Engineer, the U.S. Central Command, Saudi government officials, and other members of the Operation Desert Focus execution team. He resolved many complex issues related to the local solicitation, negotiation, and award of \$5 million in exigent repair, service, and construction contracts to meet the force protection needs of our military forces. As LTC Nicholas Kolar, Jr., acting commander of the Transatlantic Program Center, stated in a letter to me, Jim's efforts "exemplify an attorney working 'outside the box' to achieve mission execution" and "are a credit to both this and the USACE legal services organizations."

**Chuck Frew** of the Huntsville Engineering and Design Center has done exceptional legal work in support of a multi-billion dollar program known as the "ChemDemil" program. Huntsville, as life cycle project manager, is responsible for the design, facility construction, and equipment acquisition and installation at eight project sites and for one training facility. The program has been subject to intensive scrutiny at all levels within dod. The legal issues involving this program are universally complex and precedent setting. Chuck serves as the point man within the USACE legal services community for the program. He routinely fights the hard battles, to include contractual, indemnification, fiscal and environmental issues. Chuck's outstanding legal talents have enabled the ChemDemil program to "maintain its course." Chuck has also served as Acting Counsel in Huntsville during an extraordinarily difficult time.

## **The E. Manning Seltzer Award,** *continued*

Carl Korman of the Sacramento District has done outstanding work on a multi-million dollar Total Environmental Restoration Contract (TERC). Carl was an active member of the district's acquisition team, working with his clients to plan and implement the acquisition strategy for the contract. He was personally involved in virtually every aspect of the procurement, from acquisition planning to development of the solicitation to negotiation and award of the contract. Carl also successfully defended a hotly contested bid protest arising out of award of the contract; as a result of his efforts the district's acquisition decision was upheld by the GAO. The HQUSACE Acting PARC, who was personally involved in this procurement, praised Carl for his excellent work on this project.

## **The Bert P. Pettinato Award for Pride in Public Service**

*The Bert P. Pettinato Award for Pride in Public Service recognizes a member of the US Army Corps of Engineers legal services system who has demonstrated the ideals of "Pride in Public Service" through leadership, concern for people, and a personal belief that public service is both a noble calling and a public trust. It is awarded to an individual exemplifying the best in public service in the tradition of Bert P. Pettinato, who served the nation and the Corps with distinction over his long career.*

The 1997 Pettinato Public Service Award was presented to **Al Gilley** of the Baltimore District in recognition of his years of exemplary service to the Corps, his community, and the nation. He has been a valued member of the Office of Counsel since 1979, providing expert legal assistance and guidance on a wide variety of issues. A Vietnam veteran, Al has continued to serve the nation in the Army Reserve, and he currently holds the rank of Brigadier General. He was the first President of the Baltimore Chapter of Blacks in Government, and he has been active as a speaker in many local schools and churches. Al has demonstrated extraordinary dedication to the highest principles and standards of professional practice and the ideals of public service.

## **Award for Dispute Avoidance and Resolution**

*The Special Award for Dispute Avoidance and Resolution recognizes an individual or individuals who have made special contributions to the Corps legal services mission in the practice of preventive law and the avoidance and resolution of disputes.*

**Dr. Jerome Delli Priscolli, Ph.d.**, Senior Social Scientist, Institute for Water Resources, is recognized for his many years of dedicated effort and leadership in supporting and building the U.S. Army Corps of Engineers' ADR program. Jerry is a recognized ADR expert, mediator, writer, and trainer who helped lay the foundation for the Corps' ADR program with his work in social assessment techniques, public participation, and consensus building. Jerry has been involved with the ADR program from its inception in the mid-1980's. He has worked extensively on establishing the three prongs of the ADR program: training, publications, and technical assistance. He has participated in the design of and instruction at ADR training courses; he has written numerous articles and pamphlets on ADR methods and partnering strategies; and he has provided advice to field elements and other government agencies on individual applications of these ADR methods to actual disputes. In 1995, Jerry was recognized as a member of the Corps ADR/partnering team when the team received the prestigious Hammer Award under Vice President Gore's National Performance Review. Jerry has been a partner with the Office of the Chief Counsel in leading the way in changing the Corps culture in conflict resolution and disputes prevention. Jerry was unable to accept the Award in person as he was in Egypt acting as a mediator on a multi-nation meeting dealing with the Nile river.

**Frank Carr** has been a true leader and champion of the Corps of Engineers' ADR program from the beginning. He also is a recognized ADR expert who has authored numerous articles and is very much in demand as a speaker/instructor. Frank's speaking engagements have included Harvard Law School, VMI, the Panama Canal Commission, the ADR Superconference, the Office of Personnel Management, Office of Federal Procurement Policy, the AGC National Convention, and the Federal Bar Association. He serves as the Agency Dispute Resolution Specialist and as Executive Secretary to the ADR/Partnering Board of Directors. In 1989, he received the Corps' Civilian of the Year Award for his work in ADR, and in 1995 he was recognized as a member of the Corps ADR/Partnering team when the team received the prestigious Hhammer Award under Vice President Gore's National Performance Review. Frank has also done excellent work on ADR initiatives in the human resources area; he recently received the "Meritorious Civilian Service Award" for work on the Corps of Engineers Early Resolution Program (CEERP) for his efforts.

## **The Keystone Award**

*The U.S. Army Corps of Engineers legal system is comprised of a superb team of professionals including attorneys, paralegals, secretaries, and other specialists and generalists. Sometimes we overstress the role of attorneys and forget the remainder of the team. The keystone award is to recognize professionalism and valued service of an individual member of the team, other than attorneys, who made a significant contribution to the Corps legal services system and its mission. The name of the award refers to the keystone of the arch which is the supporting element of the structure, without which the arch would fail.*

**Patsy Knight** was awarded the first Keystone Award for her professional and valued service in furtherance of the Corps' legal services system and its mission. As a Paralegal Specialist in the Southwestern Division since 1981, Patsy has made invaluable contributions to both the division and to the rest of the Corps. Within SWD's Office of Counsel, her responsibilities have included case management, legal research, budget and office management matters, the contract labor program, tort claims, and bid protests. Her work has been consistently excellent. In addition, Patsy has been involved, from their inception, in various Corps-wide legal services system activities, such as the CEALS program, particularly CMIS for which she was a member of the training team, and the legal services career management committee. She has continued her involvement in both, as a participant in the development of our new matter tracking system and as Chair of the Support Staff Subcommittee of the Career Management Committee. Patsy is a consummate professional and a dedicated and extremely valued member of the division Office of Counsel and of the Corps' legal services system. It truly fitting that she be the recipient of the first Keystone Award.

## Ramon J. Powell Legal Scholarship Legacy Award

*The Ramon J. Powell Legal Scholarship Legacy Award recognizes a Corps attorney whose thoughtful and principled legal scholarship throughout his or her career continues the finest tradition of intellectual excellence exemplified by Ramon Powell. Ray was a longtime colleague -- a gentleman, an intellectual, a wise counselor, and a friend.*

This 1997 Powell Award was presented to our colleague and friend in the Real Estate Directorate -- Mr. David Cohen. Throughout his distinguished career, David has demonstrated dedication, perseverance, and thoughtful legal scholarship on countless programs and projects. His accomplishments include directing and leading many large and complex real estate programs; managing land acquisition programs for the Army, Air Force, and other federal agencies; designing and teaching courses on all aspects of the Corps' real estate mission; rewriting the regulations governing the acquisition of real property for civil works projects; and assisting NASA in determining the overland route for the space orbiter from the factory to Edwards Air Force base. David's intellectual and scholarly approach to these and other challenging projects is in the best tradition of public service exemplified by Ramon Powell.



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